SUPREME COURT OF THE UNITED STATES.

No. 60. 297.

WILLIAM & JAMES BROWN & CO., PLFFS. IN ER.

VERSUS

THOMAS McGRAN.

ERROR TO THE CIRCUIT COURT U. S. FOR GEORGIA.

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Langtree & O'Sullivan, Print.

THOMAS McGRAN
vs.
WM. BROWN, JAMES BROWN, JNO. A. BROWN, and MORRIS SHIPLEY. } Attachment.

Affidavit of Plaintiff on suing out Attachment.

STATE OF GEORGIA, *Richmond County:*

Personally appeared Thomas McGran, who, being duly sworn, deposeth and saith, that William Brown, James Brown, John A. Brown, and Morris Shipley, merchants and copartners, using the name, style, and firm of W. & J. Brown & Co., are justly indebted to him, the said Thomas McGran, in the sum of three thousand and three hundred dollars; and that the said William Brown, Jas. Brown, John A. Brown, and Morris Shipley, reside out of the State of Georgia, so that the ordinary process of law cannot be served on them.

THOMAS McGRAN.

Sworn to before me, this 24th March, A. D., 1834.
OVERTON COSBY, *J. P.*

Bond of Plaintiff in Attachment to Prosecute, &c.

STATE OF GEORGIA, *Richmond County:*

Know all men by these presents, that we, Thomas McGran and Ferdinand T. Bordell, of the county and State aforesaid, are held and firmly bound unto William Brown, James Brown, John A. Brown, and Morris Shipley, (copartners, using the name, style, and firm of W. & J. Brown & Co.) their heirs, executors, and administrators, in the sum of six thousand and six hundred dollars, for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 24th day of March, in the year of our Lord eighteen hundred and thirty-four.

The condition of the above obligation is such, that whereas the above-bound Thomas McGran hath this day prayed an attachment against the said William Brown, James Brown, John A. Brown, and Morris Shipley, which is now about to be sued out, returnable to the Honorable the inferior court next to be held in and for the county and State aforesaid.

Now, if the said Thomas McGran shall prosecute the same with effect at said court, and shall satisfy and pay all costs which may be

incurred by the said William Brown, James Brown, John A. Brown, and Morris Shipley, in case he, the said Thomas McGran, shall discontinue or be cast in his suit, and also all damages which may be recovered against him for suing out the same, then the above obligation to be void; else, to remain in full force.

THOMAS McGRAN, [L. S.]
F. T. BURDELL. [L. S.]

Test. OVERTON COSBY, *J P.*

Writ of Attachment.

STATE OF GEORGIA, *Richmond County:*

By Overton Cosby, as Justice of the peace for said county and State—To the sheriff of said county, and to the sheriff of Chatham, greeting:

Whereas Thomas McGran hath this day made oath before me, that William Brown, James Brown, John A. Brown, and Morris Shipley, merchants and copartners, using the name, style, and firm of W. & J. Brown & Co., are justly indebted to him, the said Thomas McGran, in the sum of three thousand and three hundred dollars; and that the said William Brown, James Brown, John A. Brown, and Morris Shipley, reside out of the State of Georgia, so that the ordinary process of law cannot be served upon them; and the said Thomas McGran having complied with the law entitling him to an attachment, I do hereby charge and command you to attach so much of the goods and chattels, lands and tenements, rights and credits, belonging to the said William Brown, James Brown, John A. Brown, and Morris Shipley, if to be found in said county, as shall be sufficient to answer the demands of the said Thomas McGran, and said effects to secure, so that you have the same before the Honorable the inferior next court, to be held in and for the county of Richmond, and State aforesaid, on the fourth Monday in June next; and also that you levy this attachment upon the said effects, either in the hands of any person indebted to, or having effects of the said William Brown, James Brown, John A. Brown, and Morris Shipley, in his, her, or their hands, and that you summon the person or persons in which custody or possession the same may be found, to appear at the said court, then and there to answer, upon oath, what he, she, or they are indebted to the said William, James, John A., and Morris, and what property or effects he, she, or they have in their hands, or had, belonging to them at the time of levying this attachment; and that you advertise your proceedings therein according to law, and have you then and there this writ. Herein fail not.

Given under my hand and seal, this 24th day of March, 1834.

OVERTON COSBY, *J. P.* [L. S.]

Levied the within attachment by serving summons of gurnishment on Samuel Clarke and John Phinisy, by advertising my proceedings according to law, this 25th day of March, 1834.

F. W. LACY,
Sheriff R. C.

March 25th, 1834.

Petition or Declaration.

GEORGIA, *Richmond County.*

To the honorable the Inferior Court of said County:

The petition of Thomas McGran, of this county, sheweth, that William Brown, James Brown, John A. Brown, and Morris Shipley, merchants and partners in the storage, factorage, and commission business, trading and doing business under the firm and style of W. & J. Brown & company, all citizens and residents of the Kingdom of Great Britain, were attached by their goods and chattels in the county aforesaid, to answer your petitioner in a plea of trespass on the case. For that, whereas, on the seventh day of June, in the year of our Lord eighteen hundred and thirty-three, your petitioner had, before that time, shipped to the said defendants at Liverpool, in the kingdom aforesaid, two hundred bales of Georgia upland ginned cotton, one hundred whereof were marked $\frac{M}{C}$, and weighed, in the aggregate, forty-six thousand and fifty-five pounds, and the other hundred whereof weighed forty-four thousand nine hundred and thirteen pounds, and marked $\frac{M}{A}$, and which cotton had been, before the time aforesaid, received by the said defendants, as your petitioner's agents and factors employed by your petitioners for a reasonable reward, to be paid to them by your petitioners, to receive, store, safely keep, and sell the said cotton, according to your orders and directions.

Your petitioner avers that the said defendants, while acting as your petitioner's agents as aforesaid, and while said cotton was in the charge, care, and custody of said defendants, were specially ordered and directed by your petitioner, to wit, on the twentieth day of April, in the year of our Lord eighteen hundred and thirty-three, to hold the said cottons until they should hear from your petitioner again. Yet the said defendants, in violation of your petitioner's instructions as aforesaid, and without any authority or order from your petitioner so to do, to wit, on the seventh day of June, in the year aforesaid, sold said cotton. By means of which sale, contrary to orders as aforesaid, your petitioner saith he sustained damage six thousand dollars.

And whereas, on the seventh day of June, in the year of our Lord one thousand eight hundred and thirty-three, your petitioner had employed the said defendants' factors, agent, and commission merchants, as aforesaid, to receive, store, and sell, according to your petitioner's orders, and the custom of merchants, two hundred bales of upland

ginned cotton, weighing ninety thousand nine hundred and sixty-eight pounds, marked $\frac{M}{G}$ and $\frac{M}{A}$, for a reasonable reward, to be paid by your petitioner to said defendants, they, the defendants, undertook and promised your petitionor to manage the said business, and in all their dealings with said cotton, to exercise reasonable care and diligence in keeping, storing, and selling said cotton for the best interest of your petitioner. Yet the said defendants, disregarding their said promise and undertaking, did not exercise reasonable diligence in keeping and selling said cotton, but so negligently and carelessly dealt with and by said cotton, that the same was sold at a loss and damage to your petitioner of six thousand dollars.

And whereas, on the seventh day of June, in the year of our Lord eighteen hundred and thirty-three, your petitioner had employed the said defendants, then merchants, and residents of Liverpool, in the Kingdom of Great Britain, doing the factorage and commission business, under the firm of W. & J. Brown & Co., for a reasonable reward, to be paid to them by your petitioner, to receive, store, and sell for your petitioner, ninety thousand nine hundred and sixty-eight pounds of upland ginned cotton, they, the said defendants, in consideration thereof, undertook to keep said cotton, and to sell the same to the best advantage of your petitioner, and in all things relative thereto, to obey particularly your petitioner's orders in reference to the same. But your petitioner avers that said defendants, disregarding their said promise and undertaking, did not keep secure and sell said cotton to the best interest of your petitioner, nor did they obey your petitioner's instructions thereto; but, on the contrary, manage the same carelessly and negligently, and contrary to your petitioner's express instruction, and with a reasonable prospect of a rise in the price of said article, sold the same for three thousand dollars less than its value at the time of the sale, and by reason of said negligence and forced sale, your orators lost the rise of the market, and hath sustained damage six thousand dollars aforesaid. Wherefore your petitioner sues.

AUGUSTUS B. LONGSTREET,
Plffs. Atty.

Petition of Defts. for removing cause from State Court.

GEORGIA, RICHMOND COUNTY.

Inferior Court, June Term, 1834.

THOMAS MCGRAN,
vs.
WILLIAM BROWN, JAMES BROWN,
JOHN A. BROWN and MORRIS SHIPLEY.

The petition of William Brown, and Morris Shipley, who aver themselves to be aliens, residents in the Kingdom of Great Britain, James Brown, who avers himself to be a citizen of and resident in

the State of New York, and John A. Brown, who avers himself to be a citizen of and resident in the State of Pennsylvania, merchants, and co-partners, using the name, style, and firm of W. & J. Brown & Company, humbly sheweth, that a suit has been instituted against them, and is now pending in this honorable court, by one Thomas McGran, of the said county of Richmond, who your petitioners aver is a citizen of, and resident in the State of Georgia, in which the matter is disputed, exceeds the sum or value of five hundred dollars, as appears by the records of the cause, and your petitioners shew that they are desirous of removing the said suit for trial into the next sixth circuit court of the United States, to be held in and for the District of Georgia, pursuant to the provisions of the judiciary act of the United States, in that behalf, and being willing to give good and sufficient security for their entering in said circuit court, on the first day of its session, copies of said process against them, and also for their then appearing and entering special bail in the cause; they herewith offer such surety, and pray this honorable court to receive the same, and that the said cause may be removed to the said sixth circuit court of the United States for the district of Georgia; and your petitioners will ever pray, &c.

RICHARD W. HABERSHAM, &
JOHN W. WILDE,
Attorneys for Petitioners.

Order for removing cause to the Circuit Court.

THOMAS McGRAN,
vs.
WILLIAM BROWN, JAMES BROWN,
JOHN A. BROWN and MORRIS SHIPLEY.

JUNE TERM, 1834.

The defendants in the above case having petitioned the court for the removal of this suit to the sixth circuit court of the United States, next to be holden in and for the district of Georgia, and having given good and sufficient surety in terms of the judiciary act of the United States, in such case made and provided; it is ordered that the said suit be dismissed from this court, and that the defendants have leave to remove the same into the said sixth circuit court of the United States.

Order dismissing Attachmeut.

THOMAS McGRAN,
vs.
WILLIAM BROWN, JAMES BROWN,
JOHN A. BROWN and MORRIS SHIPLEY. } Attachment.

Special bail having been entered in the above case, it is ordered that the same be dismissed.

Order discharging special bail and to cancel bail bond.

THOMAS McGRAN,
vs.
WM. BROWN, JAS. BROWN,
JNO. A. BROWN and MORRIS SHIPLEY.

The defendants having given good and sufficient security for removing the above stated case to the sixth circuit court of the United States, for the district of Georgia, and for the entry of special bail in said court, and obtained an order of this court for such removal, it is further ordered, on motion of the defendants counsel, that the special bail heretofore entered in this case, be discharged, and the bail bond canceled, and delivered up.

Certificate of the Clerk of Richmond county to exemplification of the Record.

GEORGIA—*Richmond County.*

I, James McLaws, clerk of the inferior court for the county aforesaid, do hereby certify, that the above and foregoing seven pages contain a full and complete exemplification of the proceedigs in the case of Thomas McGran against William Brown, James Brown, John A. Brown and Morris Shipley, so far as the same has progressed in said court.

In testimony whereof, I hereunto set my hand, and affixed the seal of office, this 13th day of October, 1834.
[SEAL.]

JAMES McLAWS, *Cl'k.*

GEORGIA—*Richmond County.*

I, William Shannon, one of the presiding justices of the inferior court, of the county aforesaid, do hereby certify that James McLaws, whose name appears to the foregoing certicate as clerk, is the clerk of the inferior court for the county aforesaid, duly commissioned, and qualified, the signature to the same is given, and the certificate is in due form of law, and done by the proper officer, and full faith and credit should be had and given to his attestation as such.

In testimony whereof, I have set my hand, this thirteenth day of October, 1834.

WM. SHANNON, *J. I. C. R. C.*

Filed, Nov. 6, 1834, in open court.

G. GLEN, *Clk.*

Bail by the defendants in Circuit Court U. States, Dist. of Georgia.

THOMAS McGRAN, *vs.* WILLIAM & J. BROWN & Co. } In the 6th Circuit Court of the United States, Geo. Dist., at November Term, 1834.

Case from the Inferior Court of Richmond County, Georgia.

We do jointly and severally undertake, that if William Brown, John A. Brown, and Moris Shipley, trading under the firm of W. & J. Brown & Co., the defendants in the above cause shall be condemned in the said action, at the said of the said Thomas McGran, the plaintiff, he shall satisfy the damages assessed against him, and the costs of suit, or render themselves to the custody of the Marshal of the United State for the District of Georgia, or we will do it for them.

In witness whereof, we have hereunto set our hands and seals, this first day of November, in the year of our Lord one thousand eight hundred and thirty-four, at Savannah, in the said district.

JNO. CUMMING, [L. S.]
G. B. CUMMING, [L. S.]

Signed, sealed, and acknowledged in presence of me,
JOS. CUMMING, *J. J. C. C. C.*

Filed, 6 Nov. 1834.

G. GLEN, *Clk.*

Plea.

SIXTH CIRCUIT COURT, *Geo. Dist. Nov. Term*, 1834.

And now, to wit, on this seventh day of November, in the year of our Lord one thousand eight hundred and thirty-four, come the said defendants, by their attorneys, Rich. W. Habersham & John W. Wilde, and defend the wrong, and injury, when, &c., and say that they did not promise in manner and form as the said plaintiffs have thereof declared against them, and of this they put themselves on the country, &c.

RICH. W. HABERSHAM &
JOHN W. WILDE,
Defds. Att'ys.

Filed, 6 Nov. 1834.

GEO. GLEN, *Clk.*

Replication and issue.

And the plaintiff doth the like.

AUGUSTUS B. LONGSTREET,
Pl'ffs Att'y.

At a regular circuit court of the United States for the district of Georgia, held on the sixteenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, being a day of the said term, begun and held on the Thursday after the first Monday in May, in the year aforesaid, before the honorable James M. Wayne, and the honorable Jeremiah Cuyler, came the said parties as follows, to wit:

Trial and Verdict.

JAMES McGRAN, *vs.* W. & J. BROWN & Co. } Case founded on attachment.—Certified copy of record removed from inferior court, Richmond county.

Jury No. 1. sworn—viz: 1. James M. Jones, foreman; 2. Paul Dupon; 3. Alonzo Day; 4. Joshua Helmly; 5. Joseph Crosby; 6. James Rahn; 7. Moses Johnson; 8. Henry Haupt; 9. John L. Clarke; 10. John M. Degounar; 11. William Galpin; 12. Peter Jacobs.

Verdict.

We find for the plaintiff four thousand nine hundred and seventy-eight dollars and fifty seven cents, and costs.

J. M. JONES, *Foreman.*

16th May, 1838.

Notice of motion for new trial.

WILLIAM & JAMES BROWN & Co., *ads.* THOMAS McGRAN. } Case. In the 6th Cir. Ct. U. S. Distr. of Georgia.

To Thomas McGran, or A. B. Longstreet, Esq., his attorney:

Sir: You, will please to take notice, that as counsel can be heard, we shall move the court for a new trial in the above case, on the following grounds:

First. Because the verdict is contrary to law in this. That the defendants being largely in advance for the plaintiff, and having received the consignment of said cotton without any restrictions upon their discretion, it was not competent to the plaintiff, by any subsequent order, to control the defendants in the sale of the same for their reimbursement, and the more especially as the plaintiff had, in the mean time, become insolvent.

Second. Because the verdict is contrary to evidence in this. That the plaintiff admits, by his pleadings, that his claim amounts only to three thousand three hundred dollars, and the jury have found a much greater amount.

Third. That the verdict is unsupported by evidence in this. That there is no evidence to shew the quality of the 200 bales of cotton shipped by the plaintiff to the defendants.

Fourth. That the damages are excessive in this. That the jury have allowed the interest of Georgia.

BERRIER & LAW, *Defdts. Attys.*

Sav., 17 May, 1838.
Filed 17 May, 1838.

GEO. GLEN, *Clerk.*

The court met on Saturday, the 26th May, 1838.

Present, the honorable James M. Wayne, and the honorable Jeremiah Cuyler.

Argument of motion.

THOMAS MCGRAN,
vs.
WM. & JAS. BROWN & CO. } Case—verdict.

Motion for new trial argued, and the court took time to advise.

Tuesday, 14 August, 1838, court met pursuant to adjournment.

Present, the honorable James M. Wayne, and the honorable Jeremiah Cuyler.

Overruled.

THOMAS MCGRAN,
vs.
WILLIAM & JAMES BROWN & CO. } Case—record removed from inferior court of Richmond county.

It is ordered that the motion for new trial in this case be, and the same is, hereby overruled.

Judgment for Plaintiff.

THOMAS MCGRAN,
vs.
WM. & JAS. BROWN & CO. } Case.

Whereupon it is considered and adjudged by the court, that the plaintiff do recover of the defendants the sum of four thousand nine hundred and seventy-eight dollars and fifty-seven cents, for his damage, and the further sum of
for his costs in this *in this* behalf expended. And the defendant in mercy, &c.

AUGUSTUS B. LONGSTREET,
Plaintiff's Attorney.

Judgment signed and filed 15 August 1838, in open court.
GEO. GLEN, *Clerk.*

UNITED STATES OF AMERICA—*District of Georgia, ss.*

I, George Glen, clerk of the circuit court of the United States, for the district of Georgia, do hereby certify, that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from and by me, carefully compared with the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand, affixed the seal of the said circuit court, this seventeenth day of December, in the year of our Lord one thousand eight hundred thirty-eight.

[SEAL.]

GEO. GLEN, *Clerk.*

UNITED STATES OF AMERICA—*District of Georgia, ss.*

I, Jeremiah Cuyler, judge of the district court of the United States, for the district of Georgia, do hereby certify, that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations given as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereto set my hand this seventeenth day of December, in the year of our Lord 1838.

J. CUYLER.

Which said issue in form aforesaid joined, between the parties aforesaid, aftewards, to wit, at the sittings of the sixth circuit court of the United States, for the district of Georgia, held at Savannah, in the district aforesaid, in, and for the said district, before the honorable James M. Wayne, and the honorable Jeremiah Cuyler, judges of the said court, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, came to be tried before a jury of the said district of Georgia, for that purpose duly empannelled, that is to say, good and lawful men of the said district, at which day there came as well the said Thomas McGran, the plaintiff, as the said William Brown, James Brown, John A. Brown, and Morris Shipley, by their respective attorneys aforesaid. And the jurors of the jury aforesaid, impannelled to try the said issue, being called, also come, and were then in due manner chosen and sworn to try the said issue, and upon the trial of that issue, the counsel, learned in the law, of the said plaintiff, to maintain and prove the said issue on his part, gave in evidence an account sales of two hundred bales of cotton, per Mary and Harriet, made by the said William Brown, James Brown, John A. Brown, and Morris Shipley, trading under the firm of William & James Brown & Company, the defendants in the said case, for account of the said Thomas McGran, the plaintiff, in the words and figures following, to wit:

And also introduced and proved four certain original letters from the said defendants to the said plaintiff, in the words and figures following, to wit:

Liverpool, 24th May, 1838.

P. S. Richards.
Thomas McGran, Esq.

Dear Sir:—We are in possession of your esteemed favor of 20th ult., and your wishes in respect to the cotton we now hold on your account, are noted accordingly. We regret very much that you were disappointed with sales we made of your joint cottons with our mutual friend, S. Clarke, Esq.; we assure you we took most particular pains in their disposal, and your wishes in regard thereto, namely, "to sell, on receipt of your letter dated 22d Nov., all the cottons in our hands in which you were interested, and those on the way as soon as they arrived, unless we were of opinion that better could be done by holding," were strictly borne in mind, and under those orders we certainly could not feel authorized in holding, unless appearances were almost certain to warrant a favorable issue; as those cottons, however, were sold at the best time of the market after our endeavouring to obtain higher rates than we were enabled to do, and as if they were now on hand, we do not consider that an advance on the prices then obtained could be realized; we doubt not that you will be satisfied we did the best for your interest, in our judgment, under your orders.

The cotton market, during the last few days, has assumed a more healthy appearance; the daily business is estimated at about 200 bales, and holders evince considerable firmness. When the reduced duty comes into operation, namely, the 1st June, the stability of the market will be fairly tested.

We remain
Yours, very respectfully.
W. & J. BROWN & CO.

Per Virginian.

Liverpool, 9th June, 1833.

Thomas McGran, Esq.
Augusta.

Dear Sir:—Your will see, by the annexed circular, the very extensive business done this week in our cotton market, and the further material improvement in prices.

Believing that this advance will probably equal the expectations you had formed when you last wrote, and thinking it desirable to close your cotton in our hands, now that we have been drawn upon for the advance on it, we have taken advantage of this brisk demand to dispose of the 200 bales per Mary & Harriet, say 100 $\frac{M}{G}$ at 7¼ and

100 $\frac{M}{A}$ at 7$\frac{3}{8}$, being an advance of $\frac{1}{2}$ to $\frac{5}{8}$ per bale upon its value when first landed, a result which we doubt not will be satisfactory.

We are

Yours, respectfully.

W. & J. BROWN & CO.

Liverpool, 7th June, 1833.

GENTLEMEN:—Our last circular of 31st ult., would inform you of the extensive operations of that week in our cotton market, and of an improvement of fully $\frac{1}{4}$d per lb. in prices, since when the demand has been still more brisk, and the transactions more extensive, producing a further advance of $\frac{3}{8}$d per lb., except in the fine qualities which tho' held firmly have not improved quite to the same extent. The sales for the week ending this evening, amount to 47,250 bales being much the largest week's business since the year 1825. Of these, 13,500 are Upland, at 6$\frac{7}{8}$ to 8$\frac{3}{8}$; 15,630 Orleans at 7d to 9$\frac{1}{2}$; 3,950 Alabama and Mobile at 7d to 8$\frac{1}{2}$; and 890 Sea Island at 11$\frac{1}{2}$d to 23d per lb.; about 15,000 bales are estimated to have been taken in speculation, and 2,000 for export. The market for Sea Island has also further advanced $\frac{1}{4}$d to $\frac{1}{2}$ per lb., and is decidedly firm; about 1,300 bales of this description are announced for sale by auction 14th inst. The import of cotton into this port the last two days has been heavy, and since the 1st January, it amounts to 456,000 bales against 380,000 to same period last year, in the supply from the U. States, the increase is 86,000 bales. The stock now in this port is estimated at about 236,000 against 231,000, same period last year. The increase in the stock of America is about 37,000 bales.

In other articles there is scarcely anything of interest to notice. Fresh flour in bond continues very dull, but there is some speculative demand for *sour* at 17s per brl. Fine Carolina rice sells in a retail way at 18s to 18s 6d; nothing done in turpentine or tar since our last; quercitron bark from its scarcity sells in small lots at the advanced price of 9s and 9s 6d, but the consumption is very limited; the tobacco market is extremely dull.

Yours, respectfully.

W. & J. BROWN & CO.

Cotton,	Upland	7$\frac{7}{8}$	a 8$\frac{1}{2}$	Wheat,	free p. 70lbs.	5 6	& 8 4
	Orleans	7$\frac{1}{4}$	" 9		in bond	5 9	" 6
	Alabama	7	" 8	Rice,	do.	16 6	" 18 6
	S. Island	11$\frac{3}{4}$	" 18	Cloverseed	p. cwt.	65	" 66
	Stained do.	7	" 10	Flaxseed		season over	
Flour,	free per brl.	30	& 32	Quercitron bark		8 6	" 9 6
	in bond	17	" 27	Turpentine		10 6	" 11 3
Tar,		12	" 12 6				
Tobacco,	Virginia leaf	2$\frac{1}{2}$d	" 5d	Kentucky leaf		2$\frac{1}{4}$	" 4
	Stemmed	3$\frac{1}{2}$	" 5$\frac{1}{2}$		Stemmed	3$\frac{1}{4}$	" 5$\frac{1}{4}$

P. N. York.

Liverpool, 4 *Sept.*. 1833.

THOMAS MCGRAN, ESQ.
Augusta.

DEAR SIR:—Your favor of 30 July, came to hand last evening, and we are sorry to see the view you take of the sale of the 200 bales cotton per Mary and Harriet, particularly so, as you appear to think that we did not act with the consideration due to an old correspondent.

We beg you to bear in mind that there was a balance due us from you on the joint transaction with Mr. Clarke; that the 200 bales in question were sold after the m'k't had advanced ½lb. per lb., and that it barely squares the amount. You had unfortunately been obliged to stop payment, we had the opportunity of paying ourselves by selling your cotton in a very brisk m'k't *to a profit of* 10 *per cent.*, and we ask whether it was reasonable, under such circumstances, to expect us to hold the cotton for the chance of further profit, when the loss of any *was certain to fall on us*, and the profit not *likely to go to you*, but to your creditors, (as was to be supposed,) of whom we knew nothing. This would have been the extreme of injustice towards ourselves and our absent partners, without being any advantage to you.

As to our sacrificing the cotton, how could it be called a sacrifice, when it sold in such a state of the mkt., and to such a profit as is not frequently realized on that article. As to "ourselves and any other importer here, at that time being well satisfied that the article would advance still higher," we need only say that on the same day, we sold yours, we disposed of some on account of our Baltimore House, and also sold some in which they were interested, immediately before and immediately after; and as to importers, generally, it is notorious that they sold more freely that week than any other week this season. It must have been so, as near 50,000 bales changed hands that week, and speculators had not previously held much cotton. At that time we thought it probable that the state of things, which induced you to ask us to hold the cotton, had had its due effect on the market, and it is clear that many other importers thought so also. We think you must admit that, situated as you then were, you could not reasonably have expected us to hold the cotton without pointing out in what manner we should be indemnified in event of loss thereby. That Brown, Bees & Co.'s draft was not due, does not alter the case—we had become responsible some months before by Brown B. & Co.'s acceptance of the draft of the shippers.

In regard to claiming from us the profit which might have been gained by holding, it is clear we are not liable for it in *law or equity;* as the market has ruled, however, we may regret having sold; and if we had supposed that you would yourself have derived advantage from it, we would, under any circumstances, gladly have held the cotton till this time.

Dear sir, respectfully yours,
W. & J. BROWN & CO.

And also introduced and proved two certain copies of letters from the said plaintiff to the said defendants, in the words and figures following, to wit:

AUGUSTA, April 20th, 1833.

Messrs. WILLIAM & JAMES BROWN & Co.:

Gentlemen: I am in receipt of your favors of the 4th & 5th ultimo, and with regret, notice the sales of the cotton on joint account with S. Clarke. I did hope you would have held for a saving price.

If you have any cottons on hand when this reaches you, in which I am interested, I wish you to hold them until you hear from me again.

Respectfully, &c.,

THOMAS McGRAN.

AUGUSTA, July 30, 1838.

Messrs. WM. & JAMES BROWN & Co.:

Gentlemen: I am, this morning, favoured with yours of the 7th of June, and (with much surprise) notice the sale of my 200 bales cotton per Mary & Harriett.

I beg leave to refer you to my letter of the 20th of April last, (the receipt of which you have acknowledged,) instructing you not to sell any cottons you had on hand, in which I was interested, until you heard from me again. Why did you sacrificemy cottons, as the draft drawn by Brown, Brothers & Co. at 60 days, onaccount of these cottons, could not have been accepted more than a day or two before, as it went forward by the packet of the 8th of May. Therefore you had 60 days, before you had any money to pay for me. You cannot pretend to say that you apprehended a loss, were you to hold longer, as I have no doubt you and every other importer in Liverpool, were, at the time you sold my cotton, well satisfied that the article would advance, which, I have no doubt, will be the case before you pay the draft drawn against these cottons. I have this day mentioned this transaction to several merchants here, and they are unanimously of opinion, that you had no right to sell the cottons; and you will please take notice that I do not recognise the sale, and do not consider you authorized to sell the cotton before the time the draft drawn on you by Brown, Brothers & Co., against this cotton, falls due. If the price is higher on that day than the day you sold it, I will expect you to allow me the difference, and if it is lower, I will be prepared to pay you any balance I may owe you.

&c. &c.,

THOS. McGRAN.

And did moreover prove and give in evidence, that the said defendants were factors and commission merchants, residing in Liverpool,

in the Kingdom of Great Britain, and there carrying on their said business, under the firm of William and James Brown & Company, and that the price of cotton in the said town of Liverpool, during the week ending on the seventh of August, one thousand eight hundred and thirty-three, was from nine pence one farthing to eleven pence three farthings per pound, according to quality; and that from the third of June, in the year one thousand eight hundred and thirty-three, until after the first week in August following, cottons were constantly ranging at higher prices in the Liverpool market, and were selling for the prices already stated.

And did moreover give in evidence the depositions of Robert Jones and John Shaw Townley, taken by commission, the interrogatories and cross-interrogatories with the answers of the said Robert Jones and John Shaw Townley, being as follows:

W. & J. Brown & Co., *ads.* Thomas McGran. } Case founded on attachment. In the sixth circuit court United States for the district of Georgia.

Interrogatories, to be exhibited and propounded to John Smart, J. S. Townly, R. Jones, and R. Peacock, witnesses, residing in Liverpool, in the Kingdom of Great Britain, to be produced, sworn and examined, on the part of the defendants in the above cause.

First. Do you know the parties, plaintiff or defendants, in the above cause, or either, or which of them?

Second. What was your occupation and employment in the year eighteen hundred and thirty-three, (1833,) and particularly during the latter part of May and beginning of June, of that year.

Third. Have you any knowledge of the sale of two hundred bales of cotton, shipped per Mary & Harriett, to and sold by the defendants, for and on account of the plaintiff, about the third of June, eighteen hundred and thirty-three?

Fourth. If you answer affirmatively to the foregoing interrogatory, be pleased to state whether or not the said two hundred bales of cotton were sold at the full market price of the day?

Fifth. Be pleased to state what were the transactions in cotton, during the week in which these two hundred bales were sold, did or not much cotton change hands during that week, and were the sales extensive or otherwise?

Sixth. Have you or not a knowledge of any cottons belonging to the defendants house in New York having been sold by the defendants at the same time with the said two hundred bales, or during the same week and upon the same or what other terms? State fully and particularly?

Seventh. Do you or not know the state of accounts between the plaintiff and the defendants at the time of the sale of the said two hundred bales; and were or not the defendants at that time in advance to the plaintiff, and for what amount? State fully.

Eighth. Do you or not know that at the time of the said sales of

the said two hundred bales of cotton the defendants had been informed, and were advised of the failure of the plaintiff in business? If yea, state how that information was derived to the defendants; was it from the plaintiff himself, or from other sources?

Lastly. If you know any thing further of benefit to the defendants, state the same as fully as if you were particularly interrogated thereto.

BERRIEN & LAW,
Def's Attorny.

DAVID JACKSON,
AND'W. LOW.

I acknowledge service of this and consent that a commission issue immediately. 1 Sept. 1836.

A. B. LONGSTREET,
Atto. for McGRAN.

Cross-Interrogatories on the part of THOMAS McGRAN.

First. Look upon the annexed copy of a letter dated April 20th, 1833, from Thomas McGran to Wm. and James Brown & Co., and say whether the original of said letter was not received by the house to which it was addressed, and when it was received?

Second. When were the cottons shipped in the Mary and Harriet (McGran's 200 bales) received, and when sold, and for what price? What was the current price of like cottons on the 31st of June, 1833? And what on the fifth and on the 24 August following.

Third. What was the state of accounts between plaintiff and defendants, when the cotton was sold? Was McGran indebted to the house? If yea, how much, and on what account?

Fourth. Look at the annexed copy of a letter under date of 30th July, and say whether the original of that letter was not received by the house of W. & J. Brown & Co. and when?

Fifth. Look upon the two accounts current annexed, and say whether they are not correct copies of those sent by the house of W. & J. Brown & Co. on the dates which they bear.

Sixth. Examine the copy letter annexed under date of the 22d July, and say whether the original of that letter was not received by the house of W. and J. Brown, and when?

Seventh. Was there not a draft drawn by Brown, Brothers & Co. on the cottons shipped pr. Mary and Harriet? When did it fall due?

AUGUSTUS B. LONGSTREET,
Attorney for McGRAN.

(Copy.)

DAVID JACKSON,
AND'W. LOW.

AUGUSTA, *April 20th*, 1833.

MESSRS. WM. & JAMES BROWN & Co.

Gentlemen:—I am in receipt of your favor of the 4th and 5th ultimo, and with regret, notice the sales of the cotton on joint account with S. Clarke. I did hope you would have held for a saving price. If you have any cottons on hand when this reaches you in which I am interested, I wish you to hold them until you hear from me again.

Respectfully, &c.

THOMAS McGRAN.

(Copy.)

AUGUSTA, *July 30th*, 1833.

MESSRS. WM. & JAMES BROWN & Co.

Gentlemen:—I am this morning favored with yours of the 7th of June and (with much surprise) notice the sale of my 200 bales cotton pr. Mary & Harriet. I beg leave to refer you to my letter of the 20th of April last, (the receipt of which you have acknowledged,) instructing you not to sell any cottons you had on hand in which I was interested, until you heard from me again.

Why did you sacrifice my cottons, as the draft drawn by Brown, Brothers & Co. at 60 days, on account of these cottons, could not have been accepted more than a day or two before, as it went forward by the packet of the 8th of May. Therefore, you had sixty days before, as it went forward by the packet of the 8th of May. Therefore you had sixty days before you had any money to pay for me. You cannot pretend to say that you apprehended a loss, were you to hold longer, as I have no doubt you, and every other importer in Liverpool, were at the time you sold my cottons well satisfied that the article would advance; which I have no doubt will be the case before you pay the draft drawn against these cottons. I have this day mentioned this transaction to several merchants here, and they are unanimously of opinion that you had no right to sell the cottons: and you will please take notice that I do not recognise the sale, and do not consider you authorized to sell the cottons before the draft drawn on you by Brown, Brothers and Co., against this cotton, falls due. If the price is higher on that day than the day you sold it, I will expect you to allow me the difference; and if it is lower, I will be prepared to pay you any balance I may owe you.

Yours, &c.

THOS. McGRAN.

(Copy.)

AUGUSTA, *July 22d*, 1834.

MESSRS. WM. and JAMES BROWN & Co.

Gentlemen:—I have your favor of the 31st May, and note the con-

tents. You will please sell my 200 bales cotton soon after receipt of this, unless you are of opinion you can do better by holding a little longer; as soon as you close sales you will please send me a statement of my account.

THOS. McGRAN.

1134

Copy.

MR. THOMAS McGRAN,

With WM. & JAMES BROWN & Co. *Cr.*

Interest to 30th June.

1833.										
Feb'ry. 20,	By proceeds 300 bales Cotton per Bill Isle			2681	11	6	Apl. 30, 61	22	8	1
March 23,	85	do	pr. Splendid	640		do	July 26;	2	5	7
June 29,	200	do	" Mary & Harriet,	2073	4	6	Sept. 16, 78	22	03	
				£5394	16					

1832.	*Dr.*						1832.				
Decemb. 31,	To balanae of account rendered			863	10	10	Dec. 31, 186	21	8	1
1833.							1833.				
Jan'ry. 4,	1 draft pr. John Hagan,	1636	3	7			March 8, 114	25	10	11
Feb'ry. 14,	advance on 85 B. C. pr Spl'nd.	583	16	8			April 2, 89	7	2	2
June 3,	1 draft pr. Brown, Bros. & Co.	1871		9			August 5,	9	4	6
29,	Postages,		11	4				78	9	9
	Interest,	46	17	2	500	2	4	31	12	7
	Cash 30th June, 1833,				392	15	8	46	17	2

Errors excepted, Liverpool 29th June, 1833.

W. & J. BROWN & CO.

MR. THOMAS McGRAN,

With WM. & JAMES BROWN, *Cr.*

Interest to 31st December.

1833.			1833.			
June 29,	By balance of account rendered,	392 15 8	June 30, 1834.	9	18	
Aug. 24,	" interest,	1 8				
		392 17 4				

1833.	*Dr.*									
Aug. 24,	To ½ bal. of S. Clarke & W. W. Gran ac't.	389	10	5			June 30, 1834.	9	16	4
	Postages,	2	8		389	13	1			
	Cash 13st December, 1833,				£	3	4 3	1	8	

Errors excepted, Liverpool, 24th August, 1833.

W. & J. BROWN & CO.

Depositions of witnesses produced, sworn, and examined on the part of the defendants in a cause depending in the sixth circuit court of the United States for the district of Georgia, wherein Thomas McGran is plaintiff, and William and James Brown, and company, are defendants, before David Jackson and Andrew Low, commissioners, acting under and by virtue of the commission issued in the same cause on or about the fifth day of September, in the year of our Lord one thousand eight hundred and thirty-six, and upon the interrogatories annexed to the same commission.

At the office of Messieurs Radcliffe and Duncan, this twenty-eighth day of October, one thousand eight hundred and thirty-six, in Exchange, West street, in Liverpool, in the county of Lancaster, personally appeared Robert Jones, of Liverpool, in the county of Lancaster, book-keeper, and being sworn and examined on the part of the defendants, deposeth as follows:

In answer to the first interrogatory, saith, that he doth not know the plaintiff personally, but knows him as a correspondent of the defendants.

In answer to the second interrogatory, saith, that his occupation and employment during the whole of the year one thousand eight hundred and thirty-three, was that of book-keeper to the defendants; his particular department being to keep their books.

In answer to the third interrogatory, saith, that he does know of the

ROBERT JONES.

DAVID JACKSON,
AND'W LOW.

(1)

Sale of the two hundred bales of cotton shipped per the "Mary and Harriet" to, and sold by the defendants for and on account of the plaintiff about the third day of June, one thousand eight hundred and thirty-three.

In answer to the fourth interrogatory, saith, that he has no doubt that the said two hundred bales of cotton were sold at the full market price of the day; that the same were sold through Messieurs Dobson and Gill, cotton brokers of acknowledged judgment and ability, and in a very brisk market, but saith that he is not himself acquainted with the value of cotton.

In answer to the fifth interrogatory, saith, that according to the usual returns, the sales of cotton for the week in which these two hundred bales were sold, amounted to forty-seven thousand two hundred and fifty bales, being larger than any previous week for about eight years, and during which week an advance of three-eighths of a penny per pound in the prices of cotton was established.

In answer to the sixth interrogatory, saith, that he does not know of any cottons belonging to the said defendants' house at New York having been sold by the defendants at the same time with the said two hundred bales, or during the same week.

In answer to the seventh interrogatory, saith, that he does not know the state of the accounts between the plaintiff and defendants at the time of the sale of the said two hundred bales of cotton; that the plaintiff was then indebted to the defendants on balance of principal sums, (exclusive of interest,) to the amount of one thousand six hundred and thirty-three pounds and four pence sterling, on his individual account, and also as per account current previously rendered conjointly with another party in the sum of seven hundred and seventy-nine pounds and nine pence sterling.

In answer to the eighth interrogatory, saith, that sometime previously

ROBERT JONES.

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(2)

to the said sales of the said two hundred bales of cotton, namely, on or about the eighth day of April, one thousand eight hundred and thirty-three, the defendants had been informed, and were advised of the failure of the plaintiff in business; such information was not derived from the plaintiff himself, but from other sources, namely, by letters from correspondents at Charleston and Savannah.

In answer to the last interrogatory, saith, that on the day on which the said two hundred bales were sold, the defendants also disposed of six hundred and seventy-seven bales of other cotton on account of nine different parties, and in part of which the defendants' house in Baltimore was interested; that within a week previously the defendants also sold two hundred and fifteen bales of cotton, in which their said Baltimore house was concerned, and the disposal of which was left at the defendants discretion.

And the witness further saith, that the defendants received the bill of lading of the said two hundred bales of cotton, on or about the sixth day of April, one thousand eight hundred and thirty-three, in a letter from their New York house, of Brown, Brothers, and company, dated 12th March, 1833, containing as follows: "We enclose bill of lading for 200 bales cotton shipped by McLoskey, Hagan, and Co., of Mobile, per ship Mary & Harriet, on account of Mr. Thos. McGran, of Augusta, on which you will please effect insurance. This cotton cost per invoice $9,151 77 cents.

We have accepted Mr. McGran's draft against this cotton, for 9,000 dollars, for which we shall draw on you for our reimbursement, when it matures. In handing this draft for acceptance, Mr. McGran says he would not have drawn for so large an advance, were it not that there is a balance at his credit with you, which has accumulated

in the past two years, so that if this should not produce enough to meet

ROBERT JONES.

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the advance, it will be covered by what is at his credit." The original of which said letter is now produced, and marked A.

And the witness further saith, that there was then no balance to the credit of the said plaintiff with the said defendants; but, on the contrary, he was considerably indebted to them, as already stated. And he saith, that in pursuance of the arrangement stated in the last mentioned letter, Messieurs Brown, Brothers, & company, drew a bill on the defendants under date 7th May, 1833, for one thousand eight hundred and seventy-one pounds and nine pence, at sixty days, in reimbursement of the plaintiffs draft upon them, as an advance upon the said two hundred bales referred to in the said letter, and which bill for one thousand eight hundred and seventy-one pounds and nine pence, was accepted by the defendants on the third day of June, one thousand eight hundred and thirty-three, and fell due, and was paid on the fifth day of August following.

And the witness further saith, that the said two hundred bales were held upwards of fifty days after arrival, and sold at an advance of upwards of seven per cent. on the valuation when landed, and that the same realized a profit of about nine per cent. upon the invoice amount, calculating the exchange at the same rate as the said bill drawn upon the defendants by Brown, Brothers and company, for reimbursement of their said advance.

In answer to the first cross-interrogatory, he saith, that a letter dated April 20th, 1833, from Thomas McGran to William and James Brown and company, (of which the writing purporting to be a copy of such letter annexed to the cross-interrogatories in an extract, but not a copy) was received by the defendants on or about the twenty-third day of May, one thousand eight hundred and thirty-three.

In answer to the second cross-interrogatory, saith, that the said two hundred bales were received on or about the ninth day of April, one

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thousand eight hundred and thirty-three, and sold on the third day of June following, one hundred bales at seven pence and three-eighths, and the remaining one hundred and seven pence one-fourth

per pound. Witness does not know, and cannot state what were the current prices of cotton respectively on the several days in that behalf in this interrogatory mentioned, or any of them.

In answer to the third cross-interrogatory, the witness refers to his answer to the seventh interrogatory in chief.

In answer to the fourth cross-interrogatory, saith, that no letter, of which the writing annexed thereto, dated 30th July, 1833, purporting to be a copy of a letter from the plaintiff to the defendants, was ever received by the defendants, so far as the witness knows or believes; but he saith, that the defendants did, on or about the third day of September, one thousand eight hundred and thirty-three, receive from the plaintiff a letter dated 30th July, 1833, part of the contents whereof are to the effect of the said writing purporting to be a copy of a letter of the same date.

In answer to the fifth cross-interrogatory, saith that the two copies of accounts current annexed thereto, are correct copies of accounts currents sent by the house of William and James Brown and company. Witness cannot speak to the time when the said account current dated 29th June, 1833, was transmitted, but saith that the account current dated 24th August, 1833, was transmitted on or about the day of its date.

In answer to the sixth cross-interrogatory, he saith, that he hath examined the copy-letter annexed thereto, under date of the 22d July, 1834; that the same is not a copy of any letter received by the house of William and James Brown and company, so far as

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witness knows or believes, but that a letter dated 22d July, 1833, was, on or about the twenty-third day of August, one thousand eight hundred and thirty-three, received by the defendants from the plaintiff, part of the contents whereof are to the effect stated in the said writing purporting to be a copy of a letter dated 22d July, 1834.

In answer to the seventh cross-interrogatory, the witness refers to his answer to the last interrogatory in chief.

ROBERT JONES.

We adjourn the further proceedings under this commission till to-morrow morning, the 29th of October, inst., at a quarter past ten o'clock, at this place.

DAVID JACKSON,
AND'W LOW.

At the office of Messrs. Radcliffe and Duncan, in Exchange street West, in Liverpool aforesaid, on the twenty-ninth day of October, one thousand eight hundred and thirty-six, (pursuant to adjournment,) personally appeared before the said commissiohers, John Shaw Townley, of Liverpool aforesaid, book-keeper, a witness pro

duced on behalf of the defendants, who being sworn and examined, deposeth as follows:

In answer to the first interrogatory, saith, that he knows William Brown, Joseph Shipley, and John Moore, priestman, resident partners in the house of William and James Brown and company, of Liverpool;

JOHN SHAW TOWNLEY.

DAVID JACKSON,
AND'W LOW.

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and that he doth not know the other parties, plaintiff or defendants.

In answer to the second interrogatory, saith, that during the whole of the year one thousand eight hundred and thirty-three, he was in the employment of William and James Brown and company; and during the latter part of May and beginning of June, of that year, he was their assistant book-keeper.

In answer to the third interrogatory, saith, that he knows of the sale of two hundred bales of cotton, shipped per "Mary and Harriet" to, and sold by the defendants for and on account of the plaintiff, on the third day of June, one thousand eight hundred and thirty-three.

In answer to the fourth interrogatory, saith, that the said two hundred bales of cotton were, in the judgment and belief of witness, sold at the full market price of the day.

In answer to the fifth interrogatory, saith, that the transactions in cotton during the week in which the said two hundred bales were sold, amounted in sales to forty-seven thousand two hundred and fifty bales; that a great deal of cotton did change hands in that week, and the sales were unusually extensive.

In answer to the sixth interrogatory, saith, that he does not know of any sale of cotton belonging to the defendants' house in New York at the same time with the said two hundred bales, or during the same week.

In answer to the seventh interrogatory, saith that he knows the state of accounts between the plaintiff and the defendants at the time of the sale of the said two hundred bales. The defendants were at that time in advance to the plaintiff, he being indebted to them in the sum of one thousand, six hundred and thirty-three pounds and four pence on his private account, and also in the further sum

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of seven hundred and seventy-nine pounds and nine pence, jointly, with another party.

In answer to the eighth interrogatory, saith he knows that at the time of the sale of the said two hundred bales, the defendants had been informed of the failure of the plaintiff in business; such information was received about the eighth day of April, one thousand eight hundred and thirty-three, not from the plaintiff himself, but by advices from other correspondents.

In answer to the last interrogatory, saith that on the same day on which the said two hundred bales were sold, the defendants also sold six hundred and seventy-seven bales of cotton on account of nine other parties, in which the defendants' house at Baltimore had a share or interest, and in the week previously they sold two hundred and sixteen bales, in which their Baltimore house was also interested, and the disposal of which was left at the deponent's discretion.

In answer to the first cross-interrogatory, saith that the writing annexed thereto, purporting to be a copy of a letter dated 20th April 1833, is a correct extract, but not a copy of a letter of that date from the plaintiff to the defendants, received by the latter on or about the twenty-third day of May in the same year.

In answer to the second cross-interrogatory, saith that the said two hundred bales by the Mary and Harriet, were received about the ninth day of April, one thousand eight hundred and thirty-three, and were sold on the third day of June following, one hundred bales, at seven pence three-eights per pound, and one hundred bales at seven pence, one-fourth. That witness does not know the current prices of like cottons

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on the last day of June, one thousand eight hundred and thirty-three, nor on the fifth or twenty-fourth days of August following, and cannot state the same.

In answer to the third cross-interrogatory, the witness refers to his answer to the seventh interrogatory in chief.

In answer to the fourth cross-interrogatory, saith that the copy letter under date 30th July, thereto annexed, is neither a copy nor a correct extract of any letter received by the defendants, according to the best of witness' knowledge and belief, that the same contains the substance of part of a letter dated 30th July 1833, from the plaintiff to the defendants, received by the latter about the third day of September following.

In answer to the fifth cross-interrogatory, saith that the two copies accounts current, thereto annexed, appear to be true copies of two accounts current sent by the defendants, the one dated 29th June 1833, forwarded about the twenty-fourth day of July following, and the other dated 24th August 1833, on the day it bears date.

In answer to the sixth cross-interrogatory, saith that the writing annexed thereto purporting to be a copy of a letter dated 22d July

1833, is not a copy, but is an extract (so far as it goes) of a letter of that date from the plaintiff to the defendants, received by the latter about the twenty-third day of August, one thousand eight hundred and thirty-three.

In answer to the seventh cross-interrogatory, saith that a draft for one thousand, eight hundred and seventy-one pounds and nine pence, was drawn upon the defendants by Brown, Brothers & Company, the defendants' house of New York in reimbursement of an advance.

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previously made by them to the plaintiff to the amount of nine thousand dollars against the said cottons, per Mary and Harriet. The said draft for one thousand, eight hundred and seventy-one pounds and nine pence, fell due on or about the fifth day of August, one thousand eight hundred and thirty-three.

JOHN SHAW TOWNLEY.

DAVID JACKSON,
ANDREW LOW.

We, the undersigned, acting commissioners, hereby certify, that before we began to execute the said commission, severally took the oath first specified in the schedule thereto annexed, and that the clerks by us employed in taking, writing, transcribing, and engrossing the above depositions before acting therein, severally took the oaths last specified in the said schedule annexed to the said commission.

DAVID JACKSON,
ANDREW LOW. } *Commissioners.*

Received 31st January, 1837.

GEO. GLEN, *Clerk.*

Henry Rattway, master of the ship Phœbe, of and from Liverpool, being sworn, saith he received this package from one of the gentlemen whose names are affixed to the above seals, and that it has not been in any manner altered.

HENRY RATTWAY.

Sworn to January 31, 1837.

GEO. GLEN, *Clerk.*

Opened by consent.

A. B. LONGSTREET, *plff's atty.*
BERRIEN & LAW, *deft's attys.*

Whereupon, the said counsel for the defendants did then and there insist before the judges aforesaid, in behalf of the said defendant,

that the said several matters so produced and given in evidence on the part of the defendants, were sufficient, and ought to be admitted to bar the said plaintiff of his said action against them; and that the said defendants ought to be acquitted thereof, and thereupon the said defendants by their counsel aforesaid, did then and there pray the said judges to instruct the jury, if they believed the several matters so given in evidence on the part of the defendants to be true, that they were sufficient and ought to be admitted to bar the said plaintiff of his said action against them, and that the said defendants ought to be acquitted thereof; which instruction the said judges refused to give. Whereupon the said counsel for the defendants did then and there pray the judges of the said court to give the following instructions to the jury.

1st. That the advance by the house of Brown in New York, was in effect an advance by the house in Liverpool, and after the advance so made, the shipper had no right to alter the instructions which were given at the time of such advance.

2d. That the house in Liverpool having advanced so large an amount on this cotton, having a large previous unsettled claim against the shipper, and the said shipper having afterwards, and before the sale of the cotton become insolvent, the house in Liverpool had a right to sell for their reimbursement, notwithstanding the subsequent orders of the shipper.

Which instructions the said judges refused to give, but instructed the jury that it was their exclusive province to decide from the evidence in the cause whether the defendants had advanced any money to the plaintiff on the cotton shipped by the Mary and Harriet. Whether, when the defendants sold said cotton the plaintiff was indebted to them upon a previous unsettled claim, and whether the plaintiff had become insolvent before the sale of said cotton, and also further instructed the jury that if they found from the evidence in the cause, that the plaintiff had given instructions to the defendants by his letter of the 20th April 1833, not to sell any cottons which the defendants might have on hand when that letter reached them, in which the plaintiff was interested, until the defendants heard from him again, and that such instructions were received and recognised by the defendants by the evidence in the cause, and particularly by a letter given in evidence as one from the defendants to the plaintiff, dated the 24th May 1833, in reply to the plaintiffs letter to them of the 20th April 1833, that then the defendants were not justifiable in law in the sale of the 3d June 1833, on account of the defendants having on that day accepted Brown, Brothers & Company's draft for £1,871 0 9 dated 7 May 1833, at sixty days sight. And the court further instructed the jury that if they found from the evidence in the cause that cottons were selling for a higher price from the 3d June, 1833, when the draft was accepted, and when the cotton was sold, until the time when the said draft was mature and payable, and if the evidence in the cause ascertains at any time before the maturity of the draft, what such higher price was, and that the cotton belonging to the plaintiff could have been sold for such higher price,

that then the plaintiff was entitled to recover from the defendants the difference in price between the sum for which the defendants sold the plaintiff's cotton, and the sum at which it might have been sold before or at the maturity of the draft; and with that direction left the case to the said jury, and the jury then and there gave their verdict for the said plaintiff for the sum of four thousand, nine hundred and seventy-eight dollars and fifty-seven cents, and costs.

Whereupon, the said counsel, on behalf of the defendants, did then and there except to the opinion of the said judges, and insisted on the said several matters and proofs, as an absolute bar to the said action. And inasmuch as the said several matters so produced, and given in evidence on the part of the said defendants, and by their counsel aforesaid, insisted on as a bar to the aforesaid action, do not appear by the record of the verdict aforesaid, the said counsel for the aforesaid defendants, did then and there propose their aforesaid exceptions to the opinion of the said judges, and requested the said judges, or one of them, to put his seal to this bill of exceptions, pursuant to the statutes in such case made and provided; and thereupon, the honorable James M. Wayne, one of the said judges, at the request of the said counsel for the abovenamed defendants, did put his seal to this bill of exceptions, pursuant to the statute in such case provided.

JAMES M. WAYNE, [SEAL.]
Associate Justice, Sup. Court U. States.

UNITED STATES OF AMERICA:

The President of the United States of America, to the judges of the sixth circuit court of the United States, for the district of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court, before you, between Thomas McGran, and William and James Brown & Co., a manifest error hath happened, to the great damage of the said William and James Brown & Co., as by their complaint appears: And in being fit, that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said